



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,211	10/21/2003	James Spitler	03-001-US1 (IST 3591000)	2328
57004 7590 08/20/2008				
CARR LLP (IST) 670 FOUNDERS SQUARE 900 JACKSON STREET DALLAS, TX 75202				
EXAMINER				
HOFFMAN, MARY C				
ART UNIT		PAPER NUMBER		
3733				
MAIL DATE		DELIVERY MODE		
08/20/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/690,211

**Applicant(s)**

SPITLER ET AL.

**Examiner**

MARY HOFFMAN

**Art Unit**

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 May 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 25, 29, 30 and 43-56 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 53-56 is/are allowed.  
6) ☒ Claim(s) 25, 29, 30 and 43-50 is/are rejected.  
7) ☒ Claim(s) 51 and 52 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 21 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 05/29/2008  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/29/2008 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 25, 29-30 and 43-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Yuan et al. (U.S. Patent No. 5,387,212).

Yuan et al. disclose a medical implant comprising a first bone anchor (ref. # 20) having a first proximal head and a first distal threaded shank; a second bone anchor having a second proximal head and a second distal threaded shank; and a brace assembly comprising: a shell (ref. #11) coupled to the first proximal head; a brace (ref. #30) having a longitudinal axis and a slot (ref. #32) longitudinally displaced along the

brace; a pair of bearings (ref. #45) displaced on opposite sides of the brace and positioned between the brace and the shell, each of the pair of bearings riding within the slot longitudinally displaced along the brace, wherein the bearings allow for slidingly adjusting (via groove ref. #32) and pivoting (via threaded parts ref. #21 and ref. #23, also pivoting may occur before ref. #401 and ref. #416 is clamped) the brace relative to the first proximal head along at least a portion of a longitudinal length of the brace. The medical implant further comprises a receptacle (ref. #11) ; and means for polyaxially attaching the receptacle to the second proximal head of the second bone anchor (ref. #21 and ref. #23); and wherein the receptacle comprises means for engaging with the brace. The medical implant further comprising means for locking the brace and the anchors in a fixed relationship with each other. The means for locking the brace and the anchors in a fixed relationship comprises one or more set screws (see ref. #'s 45, 416, 417, 411, 412). The one or more set screws clamps against one or more of the first and second heads to prevent movement of the brace with respect to one or more of the first and second bone anchors. The brace includes a second end portion that is at least partially ball shaped (see end of brace ref. #30). The second end portion snaps into the receptacle. The means for engaging the brace includes an inner surface of the receptacle that is keyed to match the second end portion. The brace is curved. The first and second bone anchors are pedicle screws. The brace assembly further comprises means for transmitting torque between the brace and the first distal threaded shank.

***Allowable Subject Matter***

Claims 53-56 are allowed.

Claims 51-52 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARY HOFFMAN whose telephone number is (571)272-5566. The examiner can normally be reached on Monday-Thursday 10:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mary C. Hoffman/  
Examiner, Art Unit 3733  
/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733